

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA

Plaintiff,

v.

JOSEPH R. BIDEN, in his official capacity as
President of the United States, *et al.*

Defendants.

Civil Action No. 2:17-cv-4540 (WB)

STATUS REPORT

On August 2, 2021, the Court entered an order staying this case and instructing Federal Defendants to file a status report on or before October 29, 2021 and every 90 days thereafter. ECF No. 281. And on January 3, 2022, the Court issued an order directing that the case remain stayed, and that Federal Defendants file a status report on or before January 27, 2022, and every 90 days thereafter. ECF No. 283. Federal Defendants report the following:

1. This case involves a challenge to final rules the defendant agencies issued in 2018 expanding the prior religious exemption to the contraceptive coverage requirement and creating a new moral exemption. *See* Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,536 (Nov. 15, 2018); Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,592 (Nov. 15, 2018).
2. This Court entered a preliminary injunction; the judgment was reversed and remanded by the Third Circuit on August 21, 2020, following the Supreme Court's decision in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

3. This Court has before it fully briefed dispositive motions. *See, e.g.*, ECF Nos. 252, 254, 255.
4. On July 30, 2021, Federal Defendants filed a motion asking the Court to stay the case to permit them to evaluate the issues presented by this litigation, as well as their regulatory and policy options. ECF No. 279. The Court had previously granted two other similar motions made by Federal Defendants. *See* ECF Nos. 271, 275.
5. On August 2, 2021, the Court granted Federal Defendants' motion and entered an order staying the case. ECF No. 281. In that order, the Court also instructed Federal Defendants to file a "status report on or before October 29, 2021, and every 90 days thereafter." *Id.*
6. On August 16, 2021, Federal Defendants announced that "[t]he Departments [of Health and Human Services, the Treasury, and Labor] intend to initiate rulemaking within 6 months to amend the 2018 final regulations and obtaining public input will be included as part of the Departments' rulemaking process." CMS.Gov, Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48) (Aug. 16, 2021) (available at https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act).
7. On January 3, 2022, the Court issued an order directing that the case remain stayed, and that Federal Defendants file a status report on or before January 27, 2022, and every 90 days thereafter. ECF No. 283.
8. Federal Defendants filed their last status report at the end of October 2022. Federal Defendants reported that they were continuing to work with OIRA to prepare the Notice of Proposed Rulemaking (NPRM) for publication as quickly as is possible consistent with ongoing resource limitations and prudent decision-making.

9. Federal Defendants have informed undersigned counsel that during the past 90 days, they have continued to revise the draft NPRM in response to comments received through the interagency review process under E.O. 12866, and that they intend to publish an NPRM after that review process concludes.
10. Federal Defendants propose that the case remain stayed and that Federal Defendants continue to file status reports every 90 days to apprise the Court of the status of the rulemaking and their position on the need for a continued stay.
11. Plaintiffs have advised that they do not oppose keeping the litigation in its current posture.

Dated: January 23, 2023

Respectfully Submitted,

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